

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDRE JOSEPH LAMOTHE,)	
)	
Petitioner,)	No. C 04-3395 CW
)	
v.)	ORDER GRANTING
)	CERTIFICATE OF
NICHOLAS CADEMARTORI, Chief)	APPEALABILITY IN
Probation Officer,)	PART
)	
Respondent.)	(COA No. 05-17424)

Petitioner Andre Joseph LaMothe, on probation in the County of Santa Clara in the custody of Nicholas Cademartori, Chief Probation Officer, pursuant to the judgment of the superior court of Santa Clara County, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court denied the petition. Petitioner sought a writ of appealability. The Ninth Circuit remanded for a limited purpose, for this Court to issue a modified certificate of appealability specifying which issue or issues satisfy the standards set forth in 28 U.S.C. § 2253(c)(2).

A habeas petitioner may not appeal a final order in a federal habeas proceeding without first obtaining a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability should be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28

1 U.S.C. § 2253(c)(2).¹

2 The Court finds that Petitioner has made a substantial
3 showing on claim one, that the State court's failure to
4 order a new trial based on newly discovered evidence that
5 the victim gave false testimony violated his Fourteenth
6 Amendment due process right to a fair trial, and claim
7 three, that the exclusion of conspiracy evidence violated
8 his Fourteenth Amendment due process right to a fair trial
9 and his Sixth Amendment right to present a defense. The
10 Court finds that Petitioner has not made a substantial
11 showing of a constitutional violation on any of his other
12 claims.

13 Accordingly, the application for a certificate of
14 appealability is GRANTED in part. The Court certifies that
15 the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3).

16
17 IT IS SO ORDERED.

18
19 9/6/06

20 DATED: _____



21 CLAUDIA WILKEN
22 United States District Judge

23 Copies mailed as noted
24 on attached sheet

25 ¹ Section 2253(c)(2) codified the standard announced by the
26 United States Supreme Court in Barefoot v. Estelle, 463 U.S. 880,
27 892-93 (1983). In Barefoot, the Court explained that "a
28 substantial showing of the denial of [a] federal right" means that
a petitioner "must demonstrate that the issues are debatable among
jurists of reason; that a court could resolve the issues [in a
different manner], or that the questions are adequate to deserve
encouragement to proceed further." Id. at 893 n.4.

United States District Court

For the Northern District of California

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U.S. Court of Appeals
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